



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 24, 1996

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR96-1003

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100319.

The City of McAllen (the "city") received a request for a particular case. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

Chapter 552 of the Government Code imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

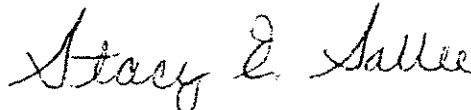
The city received the request for information on May 10, 1996. However, the city did not seek a request from this office until May 31, 1996, more than ten days after the city received the request. As the city did not comply with the mandatory ten-day deadline, the information is presumed to be public. Open Records Decision No. 195 (1978). This

presumption can be overcome only by a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public. Open Records Decision No. 195 (1978).

Some of the information submitted to this office for review is governed by statutory provisions outside of chapter 552 of the Government Code. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). Access to medical records is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA. Similarly, hospital records that contain "health care information" as defined in section 241.151(1) are confidential under section 241.152(a) of the Health and Safety Code and can only be released to persons authorized to receive the information by the patient. Health & Safety Code § 241.152. Therefore, the release provisions of this statute govern the disclosure of the hospital records that contain "health care information."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 100319

Enclosures: Submitted documents

cc: Ms. Cynthia C. Brady  
P.O. Box 3108  
Harlingen, Texas 78551-3108  
(w/o enclosures)